

EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE
Draft Work Plan for the 2001 - 2002 Interim
Amended and Approved, August 1, 2001

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July 2001

INTRODUCTION

The Education and Local Government Interim Committee has a new look for the 2001-2002 interim. As a result of the passage of Senate Bill No. 10, the Committee is now statutorily responsible for acting as a liaison with local governments in Montana as well as acting as the interim legislative committee responsible for education issues. As a result of this new responsibility, the Committee will, in addition to its statutory duties and assigned interim studies, endeavor to work with local governments in addressing issues of importance to them and to strengthen the relationship between local governments and the Legislature.

The Committee will begin its work in August of 2001 and will conclude by September 15, 2002. All of the work of the Committee, with the exception of the final report and the review of agency legislation, must be completed by that final date. This means that over the next 13 months, the Committee will hold meetings, conduct assigned interim studies, fulfill its statutory duties, meet with agency and local government personnel, hold public hearings, prepare reports, make recommendations, and, if necessary, prepare legislation.

INTERIM STUDY ACTIVITIES

The Education and Local Government Interim Committee has three assigned interim studies:

- (1) House Bill No. 625 - school funding
- (2) House Joint Resolution No. 41 - school district territory transfers
- (3) House Joint Resolution No. 35 - prepayment of college tuition

HOUSE BILL NO. 625

House Bill No. 625 is a study of K-12 public school funding. The study itself is to be conducted by the Governor and the Superintendent of Public Instruction. They are to submit a preliminary report to the Education and Local Government Interim Committee by December 31, 2001. The Committee must then analyze the report, hold public hearings on

the report across the state, provide a summary of the hearings, and make recommendations for changes to the report to the Governor by August 1, 2002. Between August and December of 2001, the Committee shall closely monitor the work of the Governor and the Superintendent. It is the intention of the Governor to appoint a seven-person task force to conduct the study with staff support from the Office of Budget and Program Planning and the Office of Public Instruction. The task force and the Education and Local Government Interim Committee may wish to conduct some joint meetings.

HOUSE JOINT RESOLUTION NO. 41

House Joint Resolution No. 41 calls for a study of the laws relating to the transfer of territory between school districts. In December 2000, the current law covering school district territory transfers was declared unconstitutional by the Montana Supreme Court. As a result, territory transfers cannot take place until a new law addressing the constitutional issues is adopted. Senate Bill No. 111 was introduced during the 2001 legislative session to address the issues identified by the Court. The bill failed passage, and the issue was referred for study. (Appendix A of this draft work plan provides further background information on this issue.)

During the 1999-2000 interim, the Education and Local Government Interim Committee formed a working group of all interested parties to meet and develop a consensus solution to the legal questions surrounding out-of-district tuition. The result was Senate Bill No. 625 that was passed by the 2001 Legislature. Because of the success of this "working group" approach to the tuition issue, the Committee may wish to consider a similar approach to House Joint Resolution No. 41. A working group of parties interested in the issue - school board members, county superintendents, legislators, and parties to the original litigation - could be formed to study the issue and make recommendations to the full Committee. Staff would provide any research as necessary, e.g. school district territory transfer laws in other states. Staff would also attend the meetings of the working group and provide services similar to services provided to the full Committee. The working group could meet throughout the fall and report its findings to the full Committee at the November meeting.

COMMITTEE ACTION: The Committee voted to have the entire Committee conduct the study on school district territory transfers. Staff will prepare a study plan for review and adoption by the Committee at its next meeting on October 3.

HOUSE JOINT RESOLUTION NO. 35

House Joint Resolution No. 35 is a study of the feasibility of establishing a tuition prepayment program within the Montana University System. The study will be conducted as a staff white paper. A white paper is a research project that is conducted by an individual research analyst and written up as a research report. Usually the topic of the white paper is very specific and does not require a full study by a committee. The recommendation for a white paper is made by staff to the Legislative Council. This interim, the Council has approved two white papers, one of which is the paper on a tuition

prepayment program. Committee staff will perform the research and prepare the white paper with findings and conclusions and possible recommendations. The white paper will be presented to the Education and Local Government Interim Committee.

STATUTORY DUTIES

Interim committees have a number of statutory duties that are common to all committees. These duties are listed in 5-5-215, MCA. Each interim committee shall:

- (1) review administrative rules within its jurisdiction;
- (2) conduct interim studies as assigned;
- (3) monitor the operation of assigned Executive Branch agencies with specific attention to the following:
 - (a) identification of issues likely to require future legislative attention;
 - (b) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (c) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
- (4) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;
- (5) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work; and
- (6) prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the Legislature.

The Education and Local Government Interim Committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following state agencies and the entities attached to the agencies for administrative purposes:

- ? State Board of Education
- ? Board of Public Education
- ? Board of Regents of Higher Education
- ? Office of Public Instruction

In the area of administrative rule review, special provisions apply to the Board of Public Education and the Board of Regents. In a 1992 decision, District Court Judge Jeffrey Sherlock of the First Judicial District ruled that the Board of Public Education is vested with constitutional rulemaking authority that is independent of any power that is delegated to the Board by the Legislature. (The decision was not appealed to the Montana Supreme Court, so it only applies to the First Judicial District, which includes Lewis & Clark County.) Therefore, any administrative rules adopted by the Board of Public Education are not subject to legislative review. However, the Board has voluntarily requested that the Committee review its rules. The Board of Regents is exempted from the Montana

Administrative Procedure Act (2-4-102(2)(a)(iii)), and therefore, any rules adopted by the Board of Regents are also not subject to legislative review.

The Committee must decide how it wishes to fulfill its statutory duties. Appendix B of this draft work plan is an issues and options paper that will help guide the Committee in its decisionmaking.

COMMITTEE ACTION: *With regard to its statutory responsibilities, the Committee made the following decisions:*

- 1. *The Committee, with the assistance of the agencies and the public, shall identify issues in need of legislative attention and allocate an appropriate amount of time to allow for staff analysis and agency presentations.***
- 2. *The Committee shall reserve time at each meeting for public testimony specifically related to the operation of an agency and shall provide for appropriate follow-up by staff and the agency.***
- 3. *Committee staff shall monitor proposed agency rules, provide a brief summary of the proposed rules, and bring any controversial rule to the Committee for discussion.***
- 4. *As agencies begin developing legislation, Committee staff shall review the legislation and provide a brief summary to the Committee. At the request of an agency and with Committee approval, Committee staff may work with an agency throughout the interim to prepare and develop specific legislative proposals.***

OTHER INTERIM ACTIVITIES

In addition to the statutory duties common to all interim committees, the Education and Local Government Interim Committee has very specific statutory duties of its own. Those duties are primarily in the areas of postsecondary education and local government.

POSTSECONDARY EDUCATION

The postsecondary education duties were previously assigned to the Postsecondary Education Policy and Budget (PEPB) Subcommittee of the Legislative Finance Committee. When the interim committee process was revamped by the 1999 Legislature, the PEPB Subcommittee was dissolved and its duties were assumed by the Education and Local Government Interim Committee. Those duties include:

- (1) providing information to the Board of Regents on annual budget allocations, annual goal statement development, long-range planning, outcome assessment

- programs, and any other area that may have significant educational or fiscal policy impact;
- (2) periodically reviewing the success or failure of the University System in meeting its annual goals and long-range plans;
 - (3) periodically reviewing the results of outcome assessment programs;
 - (4) developing mechanisms to ensure strict accountability with regard to the revenue and expenditures of the University System;
 - (5) studying and reporting to the Legislature on the advisability of adjustments to the mechanisms used to determine funding for the University System, including criteria for determining appropriate levels of funding;
 - (6) acting as a liaison between both the Legislative and Executive Branches and the Board of Regents; and
 - (7) encouraging cooperation between the Legislative and Executive Branches and the Board of Regents.

During the 1999-2000 interim, the postsecondary education duties were handled by the Postsecondary Education Policy and Budget (PEPB) Subcommittee of the Education Interim Committee. The Subcommittee was composed of eight legislators, three Regents (including the Student Regent), the Commissioner of Higher Education, and a representative of the Governor's Office and was staffed by the Legislative Fiscal Division. This interim, the Education and Local Government Interim Committee will have to decide on the composition of the PEPB Subcommittee in consultation with the Legislative Fiscal Analyst assigned to the Subcommittee. The PEPB Subcommittee will adopt its own work plan for the interim.

COMMITTEE ACTION: The Committee agreed that some of the postsecondary duties could be addressed by the full Committee. The Committee also agreed to postpone the formation of a PEPB Subcommittee for the time being.

LOCAL GOVERNMENT

During the 1999-2000 interim, the Legislative Council assigned local government responsibilities to the Interim Education Committee. That assignment was formalized with the passage of Senate Bill No. 10 and the creation of the Education and Local Government Interim Committee. The Committee is now required to:

- (1) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
- (2) bring together representatives of state and local government for consideration of common problems;
- (3) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
- (4) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;

- (5) promote concise, consistent, and uniform regulation for local government;
- (6) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;
- (7) review state mandates to local governments that are subject to 1-2-112, MCA, and 1-2-114 through 1-2-116, MCA; and
- (8) make recommendations to the Legislature, Executive Branch agencies, and local governing bodies concerning:
 - (a) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;
 - (b) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;
 - (c) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and
 - (d) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government.

Because there are no local government studies this interim, the Committee can choose the local government issues on which it wants to work. At the August 1 meeting, local government representatives will discuss some possible issues for further exploration by the Committee.

COMMITTEE ACTION: *With regard to local government issues, the Committee agreed to:*

- ? ***monitor the implementation of House Bill No. 124;***
- ? ***monitor the state assumption of welfare programs (Senate Bill No. 339);***
- ? ***monitor the transition to state assumption of District Court funding (Senate Bill No. 176); and***
- ? ***monitor the interim study of health care costs and health insurance costs (Senate Joint Resolution No. 22).***

TENTATIVE MEETING SCHEDULE

For planning purposes, staff recommends the following meeting schedule for the interim. The Committee may wish to hold some 2-day meetings in order to accommodate subcommittee meetings and joint meetings with the task force on school funding. This schedule does not include the public hearings required by House Bill No. 625 (school funding study). It is anticipated that those hearings will be held in March and April, with dates and places to be decided at a later time. All of the meetings, except for the public hearings, will take place in Helena.

- ? October 3, 2001 (Wednesday)

- ? November 2, 2001 (Friday)
- ? January 11, 2002 (Friday)
- ? February 14, 2002 (Thursday)
- ? June 5, 2002 (Wednesday)
- ? July 12, 2002 (Friday)
- ? September 13, 2002 (Friday)
- ? October 10, 2002 (tentative) (Thursday)

APPENDIX A

HOUSE JOINT RESOLUTION NO. 41

School District Territory Transfers

Prepared for the Education and Local Government Interim Committee
by Connie Erickson, Research Analyst

June 2001

BACKGROUND

Under current Montana law, a majority of the registered electors of a school district may petition the County Superintendent of Schools to transfer the territory in which the registered electors reside to another school district. The proposed transfer must meet the following requirements:

- (1) the territory to be transferred is contiguous to the district to which it is to be attached;
- (2) the territory to be transferred is not located within 3 miles of an operating school of the district from which it is to be detached;
- (3) the transfer of the territory will not reduce the taxable value of the district to less than \$100,000 for an elementary district or \$300,000 for a high school district;
- (4) the board of trustees of the receiving district has approved the transfer in writing; and
- (5) the territory to be transferred has not been included in a transfer petition within the previous 3 years.

The petition itself must be presented to the County Superintendent, must contain a legal description of the territory to be transferred and a description of the receiving district, the reasons for the transfer request, and the number of school-age children residing in the territory, and must be accompanied by a \$100 filing fee. Upon determining that the petition meets all of the statutory requirements, the County Superintendent shall schedule a hearing on the petition. The hearing must be conducted in accordance with the rules of procedure adopted by the Superintendent of Public Instruction. Any resident, taxpayer, or representative of the affected districts has the right to speak at the hearing. Within 30 days after the hearing, the County Superintendent shall either grant or deny the requested transfer. The decision must be based on the effects that the transfer will have on those residing in the territory to be transferred as well as those residing in the remaining territory of the district. The decision of the County Superintendent may be appealed to District Court by any resident, taxpayer, or representative of either district affected by the transfer.

In 1994, individuals residing in both Rosebud and Big Horn Counties petitioned their respective County Superintendents requesting a territory transfer from the Lame Deer High School District back to the Colstrip and Hardin High School Districts. The Lame Deer

District had been created the year before with land from both Colstrip and Hardin. Both County Superintendents granted the respondents' request to transfer the territory. The Lame Deer High School District appealed the decision to the Superintendent of Public Instruction who reversed the County Superintendents' decisions. The respondents then appealed the State Superintendent's decision to their respective District Courts, who affirmed the County Superintendents' decisions. Lame Deer High School appealed the decisions to the Montana Supreme Court, which consolidated the cases, and issued a decision on December 19, 2000, that reversed the decisions of the District Courts.

The Supreme Court held that the current law granting County Superintendents the power to transfer territory from one school district to another is an unconstitutional delegation of legislative power because the statute is too broad and lacks specific criteria to be considered when deciding to grant or deny a petition for transfer. The Legislature may delegate its legislative function to an administrative agency, but it must provide clear and ascertainable limits, objective criteria, or clear and definitive legislative standards to control the exercise of discretion and decisionmaking authority of the agency.

SENATE BILL NO. 111

Prior to the convening of the 2001 Legislature, Senator Alvin Ellis, Jr. requested that a bill be drafted to require that both school districts involved in a territory transfer approve the transfer before the petition could be submitted to the County Superintendent. This approach had been tried in previous legislative sessions but had always failed because opponents claimed that a transfer would never take place because the district from which the territory was to be removed would never consent to the transfer. When the Supreme Court issued its decision in the Lame Deer case in December 2000, Senator Ellis requested that his bill draft be changed to address the issues raised in the Court's decision. The result was Senate Bill No. 111.

Basically, Senate Bill No. 111 would have required a County Superintendent to approve a transfer of territory if both school districts approved the transfer in writing. If the district that would transfer territory did not approve, the County Superintendent would hold a hearing on the petition. In making the final decision, the County Superintendent was required to weigh the beneficial and the harmful effects that the transfer would have on the educational benefits for those residing in the territory proposed for transfer and on those remaining in the district. The County Superintendent was to determine whether the educational benefits outweighed any educational harm by considering the economic effects on each district, the effect on students, and the social and cultural effects on each district.

Many of the opponents to the bill expressed concerns that the bill was still too vague and did not provide sufficient guidance to the County Superintendents in making a final decision. After a rewrite of the bill in the Senate, amendments were proposed in the

House Education Committee to clarify the remaining questions. but the amendments were not approved. Because the bill attempted to address a constitutional problem with the current statute, the House Education Committee decided it might be appropriate to rerefer the bill to the House Judiciary Committee. While the Judiciary Committee was well-equipped to deal with the law and constitutional questions, the Committee's general unfamiliarity with school law and the duties of County Superintendents and school district trustees, coupled with the time constraints of a legislative session, resulted in frustration and confusion in dealing with the issue and with lobbyists' requests for changes. Senate Bill No. 111 was eventually tabled in the House Judiciary Committee.

HOUSE JOINT RESOLUTION NO. 41

After the failure of Senate Bill No. 111, Representative Joan Andersen introduced House Joint Resolution No. 41 that requested a study of the laws governing school district territory transfers in order to develop a procedure that addressed the constitutional issues raised by the Montana Supreme Court. The study was to address the following issues:

- (1) the procedure for asking for a transfer of territory;
- (2) the requirements to be met before a transfer can be considered;
- (3) the role of the boards of trustees involved in a territory transfer;
- (4) the role of the County Superintendent in a territory transfer;
- (5) the criteria to be used in deciding if a territory transfer should take place; and
- (6) an appeals process.

House Joint Resolution No. 41 ranked seventh in the interim study poll conducted following the adjournment of the 2001 legislative session. The study was assigned to the Education and Local Government Interim Committee.

APPENDIX B

COMMITTEE STATUTORY RESPONSIBILITIES

Issues and Options for Consideration

Education and Local Government Interim Committee
August 1, 2001

The Education and Local Government Interim Committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to those agencies for administrative purposes:

- ? State Board of Education;
- ? Board of Public Education;
- ? Board of Regents of Higher Education; and
- ? Office of Public Instruction.

I. Administrative Rule Review

Issue: Section 5-5-215, MCA, requires each interim committee to review the administrative rules of the state agencies under the Committee's jurisdiction. Keeping in mind the special provisions that apply to the Board of Public Education and the Board of Regents, the Committee may:

- ? review the conduct of administrative proceedings;
- ? review rules of the agencies;
- ? require an agency to hold a hearing on a rule;
- ? submit oral and written testimony at an agency's rulemaking hearing;
- ? require an agency to prepare an economic impact statement;
- ? obtain an agency's rulemaking records for the purpose of reviewing compliance with the Montana Administrative Procedure Act;
- ? submit recommendations for the adoption, amendment, or rejection of a rule;
- ? make a written objection to an agency regarding a rule;
- ? delay the effective date of a rule;
- ? poll the Legislature to determine whether a proposed rule is consistent with legislative and statutory intent;
- ? prepare legislation relating to MAPA or any other matter relating to rules;
- ? participate in any proceedings involving MAPA; and
- ? require an agency to provide copies of all documents relating to rules.

Options: In order to fulfill its statutory responsibility regarding administrative rules, the Committee may choose from among the following options:

1. The Committee's attorney shall present a report on all proposed rule notices at each meeting of the Committee.
2. The Committee shall request the agency to send a copy to the Committee when the agency sends the letter to the primary sponsor requesting input on

legislative intent. The Committee shall select those proposed rules on which it wants further information.

3. Committee members shall prepare a list of specific issues of interest, and the Committee attorney shall prepare a proposed rule notice report as necessary.
4. The Committee's attorney shall respond to rule review requests from the Committee or from individual legislators as those requests arise throughout the interim.

II. Agency Monitoring

Issue: Section 5-5-215, MCA, requires each interim committee to monitor the operation of assigned executive branch agencies with specific attention to the following:

- ? identifying issues requiring future legislative attention;
- ? improving existing law through the analysis of problems experienced with the law; and
- ? seeking public input on the operation of an agency.

Options: In order to fulfill its statutory responsibility regarding agency monitoring, the Committee may choose from among the following options:

1. The Committee shall schedule each agency to present an in-depth review of the agency and all of the programs that it administers.
2. The Committee, with the assistance of the agencies and the public, shall identify issues in need of legislative attention and allocate an appropriate amount of time to allow for staff analysis and agency presentations.
3. The Committee shall reserve time at each meeting for public testimony specifically related to the operation of an agency and shall provide for appropriate followup by staff and by the agency.
4. As the Committee or individual members become aware of issues associated with the performance of an agency, the Committee shall request information from the agencies.

III. Review of Draft Legislation

Issue: Section 5-5-215, MCA, requires each interim committee to review the proposed legislation of the assigned agencies prior to the legislative session. Further, each interim committee is responsible for requesting legislation on behalf of its assigned agencies, a duty that previously belonged to the Legislative Council.

Options: In order to fulfill its statutory responsibility regarding review of draft legislation, the Committee may choose from among the following options:

1. The Committee shall work with each agency throughout the entire interim in preparing legislative proposals.
2. The Committee shall develop a formal review process for legislative proposals prior to requesting legislation.
3. The Committee shall, without a formal review, request all legislation that is presented by an agency.

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